

REMARKS

Applicants submit this Request for Reconsideration After Final in reply to the final Office Action mailed January 4, 2005.

Page 2 of the final Office Action indicates that the Terminal Disclaimer filed September 14, 2004 was not accepted because it was allegedly not signed by an attorney of record. Accordingly, Applicants respectfully submit herewith a Substitute Terminal Disclaimer signed by Barbara C. McCurdy, Reg. No. 32,120, who is listed on the Declaration and Power of Attorney filed in Application No. 09/079,168, to which this application claims priority, as an attorney of record. For your convenience, a copy of the Declaration filed in Application No. 09/079,168 is enclosed. Accordingly, Applicants respectfully request acceptance of the Substitute Terminal Disclaimer.

On pages 2-3 of the Office Action, claim 1 was rejected in a nonstatutory double patenting rejection over claim 1 of U.S. Patent No. 5,897,507 in view of U.S. Patent No. 5,285,795. While Applicants do not necessarily agree that the rejection is proper, solely in the interests of expediting the prosecution of this application, Applicants submit a Substitute Terminal Disclaimer herewith to overcome the double patenting rejection. The submission of the Substitute Terminal Disclaimer in no way manifests an admission by Applicants as to the propriety of the double patenting rejection set forth in the final Office Action. Nor do Applicants subscribe to the various characterizations and assertions regarding claim 1 and the cited references set forth in that double patenting rejection. See M.P.E.P. §804.02 *citing Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991) ("In legal principle, the filing of a terminal disclaimer simply serves the statutory function of

removing the rejection of double patenting, and raises neither presumption nor estoppel on the merits of the rejection"). Should the need arise at a later date, Applicants reserve the right to present arguments regarding the merits of the double patenting rejection and the nonobviousness of application claim 1 over patent claim 1 of U.S. Patent No. 5,897,507 in view of U.S. Patent No. 5,285,795. Accordingly, Applicants respectfully request withdrawal of the double patenting rejection.

Applicants appreciate the Examiner's indication that claims 2, 4-6, and 86-88 are allowable.

Applicants respectfully request that this Request for Reconsideration After Final under 37 C.F.R. § 1.116 be considered by the Examiner, placing claims 1-2, 4-6, and 86-88 in condition for allowance. There are no proposed amendments, and thus the application does not raise new issues or necessitate the undertaking of any additional search of the art by the Examiner, since all of the elements and their relationships claimed were earlier claimed in the claims as examined. Therefore, this Request for Reconsideration After Final should allow for immediate action by the Examiner. It is respectfully submitted that the consideration of this Request for Reconsideration After Final would allow the Applicants to reply to the final rejections and place the application in condition for allowance.

In view of the foregoing remarks, Applicants submit that this claimed invention is neither anticipated nor rendered obvious in view of the prior art references cited against this application. Applicants therefore request the consideration of this Request for Reconsideration After Final, the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.

The final Office Action contains characterizations of the claims and the related art with which Applicants do not necessarily agree. Unless expressly noted otherwise, Applicants decline to subscribe to any statement or characterization in the final Office Action.

In discussing the claims in this Request for Reconsideration After Final, Applicants are in no way intending to limit the scope of the claims to any exemplary embodiments described in the specification or abstract and/or shown in the drawings. Rather, Applicants are entitled to have the claims interpreted broadly, to the maximum extent permitted by statute, regulation, and applicable case law.

Please grant any extensions of time required to enter this Request for Reconsideration After Final and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: March 4, 2005

By: 
Michael W. Kim
Reg. No. 51,880

Attachments: Substitute Terminal Disclaimer;
Copy of the Declaration and Power of Attorney filed in Application No. 09/079,168.